

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

=====X  
FREDERICK E. LANDRIGAN,

Case No.: 07 CIV.8669

Plaintiff

- against -

**VERIFIED ANSWER TO  
AMENDED COMPLAINT**

LEO R. KAYTES, JR., LEOKAYTES FORD, INC.,  
P.O. RON DONNATIN and THE TOWN OF  
WARWICK,

Defendants

=====X

The Defendant, P.O. RON DONNATIN, by his attorneys, Hodges Walsh & Slater, LLP, as and for an Answer to plaintiff's Amended Complaint, allege as follows:

**AS AND FOR AN ANSWER TO PRELIMINARY STATEMENT**

1. This answering defendant denies each and every allegation contained in the sub-paragraphs contained in the "Preliminary Statement" of the Plaintiff's Complaint.

**AS AND FOR AN ANSWER TO THE PARTIES**

2. This answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1", "2", and "3", of the Plaintiff's Complaint.

**AS AND FOR AN ANSWER TO JURISDICTION AND VENUE**

3. This answering defendant denies each and every allegation contained in paragraph "6" of the plaintiff's complaint.
4. This answering defendant denies each and every allegation contained in paragraph "7" of the plaintiff's complaint, but admits that Orange County is within the Southern District of New York.

**AS AND FOR AN ANSWER TO THE FACTS**

5. This answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "8", "9", "10", "11", "12", "13", "15", "16", "23", and "24", of the Plaintiff's Complaint.
6. This answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "14" of the plaintiff's complaint, but admits that the plaintiff stopped payment on the check.
7. This answering defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "19" of the plaintiff's complaint, but admits that Police Officer Donnatin contacted the plaintiff concerning plaintiff's failure to pay for a replaced engine and a replaced transmission.
8. This answering defendant denies each and every allegation contained in paragraphs "17", "18", "20", "21", "22", "25", "26", "27", "28", "29", "30", "31", "32", and "33" of the plaintiff's complaint.

**AS AND FOR AN ANSWER TO FIRST CAUSE OF ACTION**

9. Repeats and reiterates with the same force and effect as though fully set forth herein each and every response made heretofore in answer to paragraphs "1" through "33" of the Plaintiff's Complaint.
10. This answering defendant denies each and every allegation contained in paragraph "35" of the plaintiff's complaint.

**AS AND FOR AN ANSWER TO SECOND CAUSE OF ACTION**

11. Repeats and reiterates with the same force and effect as though fully set forth herein each and every response made heretofore in answer to paragraphs "1" through "35" of the Plaintiff's Complaint.
12. This answering defendant denies each and every allegation contained in paragraph "37" of the plaintiff's complaint.

**AS AND FOR AN ANSWER TO THIRD CAUSE OF ACTION**

13. Repeats and reiterates with the same force and effect as though fully set forth herein each and every response made heretofore in answer to paragraphs "1" through "37" of the Plaintiff's Complaint.
14. This answering defendant denies each and every allegation contained in paragraph "39" of the plaintiff's complaint.

**AS AND FOR AN ANSWER TO PENDENT STATE CLAIMS  
FOURTH CAUSE OF ACTION**

15. Repeats and reiterates with the same force and effect as though fully set forth herein each and every response made heretofore in answer to paragraphs "1" through "39" of the Plaintiff's Complaint.
16. This answering defendant denies each and every allegation contained in paragraph "41" of the plaintiff's complaint.

**AS AND FOR AN ANSWER TO FIFTH CAUSE OF ACTION**

17. Repeats and reiterates with the same force and effect as though fully set forth herein each and every response made heretofore in answer to paragraphs "1" through "41" of the Plaintiff's Complaint.



18. This answering defendant denies each and every allegation contained in paragraph "43" of the plaintiff's complaint.

**AS AND FOR ANSWER TO SIXTH CAUSE OF ACTION**

19. Repeats and reiterates with the same force and effect as though fully set forth herein each and every response made heretofore in answer to paragraphs "1" through "43" of the Plaintiff's Complaint.

20. This answering defendant denies each and every allegation contained in paragraph "45" of the plaintiff's complaint.

**AS AND FOR AN ANSWER TO SEVENTH CAUSE OF ACTION**

21. Repeats and reiterates with the same force and effect as though fully set forth herein each and every response made heretofore in answer to paragraphs "1" through "45" of the Plaintiff's Complaint.

22. This answering defendant denies each and every allegation contained in paragraph "47" of the plaintiff's complaint.

**AS AND FOR AN ANSWER TO EIGHTH CAUSE OF ACTION**

23. Repeats and reiterates with the same force and effect as though fully set forth herein each and every response made heretofore in answer to paragraphs "1" through "47" of the Plaintiff's Complaint.

24. This answering defendant denies each and every allegation contained in paragraph "49" of the plaintiff's complaint and refers all questions of law to the Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

25. The plaintiff's complaint fails to state a cause of action upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

26. The plaintiff's claims do not rise to the level of a constitutional violation as against this defendant.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

27. The plaintiff's claims are barred by his failure to comply with the applicable provisions of the General Municipal Law of the State of New York.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

28. The defendant, Police Officer Ron Donnatin, is entitled to qualified immunity.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

29. The defendant, Police Officer Ron Donnatin, is entitled to absolute immunity.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

30. The defendant's conduct was based upon probable cause.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

31. The plaintiff's claim for punitive damages is barred by public policy and the laws of the State of New York.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

32. The defendant acted in good faith and without malice.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

33. The plaintiff's damages, if any, were caused and/or contributed to by reason of the culpable conduct of the plaintiff.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

34. The plaintiff's damages, if any, were caused and/or contributed to by reason of the improper and unlawful acts of the plaintiff.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

35. The plaintiff's damages, if any, were created and caused, in whole or in part, by the plaintiff's failure to take steps to mitigate such damages.

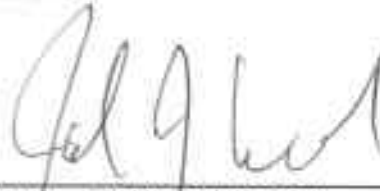
**AS AND FOR A CROSS-CLAIM AGAINST DEFENDANT, LEO R. KAYTES, JR.,  
AND LEO KATES FORD, INC.**

36. That the defendant, P.O. RON DONNATIN, denies that he is guilty of fault as alleged in the complaint but further alleges that, if the plaintiff recovers a verdict against this defendant then this answering defendant, on the basis of apportionment of responsibility for the alleged occurrence, is entitled to contribution and/or indemnification from the co-defendants, Leo R. Kaytes, Jr., and Leo Kaytes Ford, Inc., for all or part of any verdict or judgment that the plaintiff may recover against this defendant.

WHEREFORE, Defendant, P.O. RON DONNATIN, demands judgment dismissing the Plaintiff's Complaint herein or in the event that the plaintiff recovers from this defendant, then and in that event, this defendant demands judgment over and against the co-defendants, Leo R. Kaytes, Jr., and Leo Kaytes Ford, Inc., for all or part of said verdict or judgment that the plaintiff may recover against this defendant, together

with the costs and disbursements of this action.

Dated: White Plains, New York  
November 9, 2007



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JOHN J. WALSH (4092)  
Hodges Walsh & Slater, LLP  
Attorneys for Defendant, P.O. Ron Donnatin  
55 Church Street, Suite 211  
White Plains, NY 10601  
914-385-6000  
Fax: 914-385-6060

To: Clifford G. Kleinbaum  
Attorney for Plaintiff  
11 Martine Avenue, 12<sup>th</sup> Floor  
White Plains, NY 10606  
914-644-2000




**VERIFICATION**

STATE OF NEW YORK                    )  
  SS.:  
COUNTY OF WESTCHESTER        )

I, THE UNDERSIGNED, AM AN ATTORNEY ADMITTED TO PRACTICE IN THE COURTS OF THE STATE OF NEW YORK, AND SAY THAT: I AM THE ATTORNEY OF RECORD, OR OF COUNSEL WITH THE ATTORNEY OF RECORD, FOR THE DEFENDANT, **P.O. RON DONNATIN**. I HAVE READ THE ANNEXED **VERIFIED ANSWER TO AMENDED COMPLAINT**, KNOW THE CONTENTS THEREOF, AND THAT SAME ARE TRUE TO MY OWN KNOWLEDGE, EXCEPT THOSE MATTERS THEREIN WHICH ARE STATED TO BE ALLEGED UPON INFORMATION AND BELIEF, AND AS TO THOSE MATTERS THEREIN NOT STATED UPON KNOWLEDGE, IS BASED UPON THE FOLLOWING: MATERIAL IN THE FILE, INFORMATION AND DOCUMENTS CONTAINED IN SAID FILE.

Dated: White Plains, New York  
November 9, 2007

  
\_\_\_\_\_  
JOHN J. WALSH



**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK                    )  
  SS:)  
COUNTY OF WESTCHESTER        )

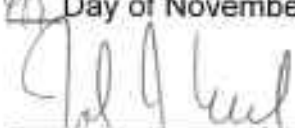
TRACIE TOBACCO being duly sworn, deposes and says:

I am employed by the law firm of HODGES, WALSH & SLATER, LLP, counsel for Defendant, P.O. Ron Donnatin, in the above action and I am over the age of 18 years and I am not a party to this action. On November 9, 2007 I served a true copy of **Verified Answer to Amended Complaint** in the following manner: by mailing same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York addressed to the last known address of all attorneys in this action as indicated below:

TO: Clifford G. Kleinbaum  
Attorney for Plaintiff  
11 Martine Avenue, 12<sup>th</sup> Floor  
White Plains, NY 10606  
914-644-2000

  
\_\_\_\_\_  
TRACIE TOBACCO

Sworn to before me this  
29<sup>th</sup> Day of November, 2007

  
\_\_\_\_\_  
Notary Public

JOHN J. WALSH  
Notary Public, State of New York  
No. 452745D  
Qualified in Orange County 10  
Commission Expires May 31, 2010